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19 51 **File No.** 31|57

Legal Dept.

G **BRANCH**

Subject:—

Opinion on the Bombay Hay Trade Dealers licensing Order, 44

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File No.

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C O N T E N T S.

Legal Department File No. O. Hay/51

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SMR 24-7-56
5 Copies.

Legal Department.

As pointed out in R.L.A.'s No. G-430, dated the 12th December 1950, in view of the amendment of the Essential Supplies(Temporary Powers) Act, 1946 as amended by Act No. LII of 1950 cattle fodder has been included as an essential commodity under the Essential Supplies(Temporary Powers) Act, 1946. In view of this amendment in the Central Act, it would no longer be possible for the State Government to regulate or control cattle fodder, under the Bombay Act. Consequently the Bombay Hay Licensing Order which was continued in force under the Bombay Essential Commodities and Cattle(Control) Act, 1946 ceased to have effect on the date on which the Essential Supplies Act was amended by the said Act LII of 1950. The licence issued under that Act is therefore void and inoperative. No action can therefore be taken against Mr. K.Devichand in this case for contravention of condition 4 of that licence.

Id./.....

Additional Secretary to Government.

U.R. to C.S.D., No. G-227, dated the 13th June 1951.

GMR 25-7-56
Copies.

Office of the R.L.A.

Attention of the Civil Supplies Department is invited to R.L.A.'s opinion No. C-227 dated the 13th June 1951 wherein it has been held that the Bombay Hay Trade Licensing Order 1944 ceased to have effect on the date on which the Essential Supplies(Temporary Powers) (Amendment)Act, 1950, came into force and that licences issued thereunder have become void and inoperative. The view taken by the Director of Civil Supplies(Fuels) at 'A' of his note on page 105 is not correct. The Government of India in the Ministry of Food and Agriculture's Notification No. F.16-2-/51-SP dated the 27th April 1951 has not given the Government of Bombay the power to maintain their existing orders for a temporary period of three months as held by the Director of Civil Supplies(Fuels). Under that notification the Government of Bombay has been empowered to make orders under the Central Act in relation to the production, supply and distribution of hay in the State of Bombay for a period of three months after which date the power would automatically come to an end. The Bombay Government does not possess any power to validate licences issued under their Orders which have become void and inoperative.

The Civil Supplies Department may bring tothe notice of the Government of India all the orders which it is desired to validate and if the Government of India agrees to issue a validating Ordianance it will prepare a draft. The promulgation of such an Ordinance is entirely for the Government of India to decide and it is not usual in such cases for the State to send a draft.

Id./..... 15/6

Remembrancer of Legal Affairs.

U.R. to C.S.D., No. G-234, dated the 15th June 1951.

SMR 25-7-56, 4 copies.

It was the duty of the Hay Inspector to supervise the weighment himself, and then to sign the weight notes. Failure to supervise cannot render the hay dealer liable for the shortage which was noticed at the receiving station. According to the Civil Supplies Department's Circular dated the 20th November 1943 at page 9 ante the licensed dealer was required to supply hay F.O.R., that is, he was required to supply hay to the Hay Inspector at the despatching station only. In F.O.R. contracts the seller has only to put the goods on rail at his cost and the responsibility thereafter would be the buyer's(1913, 3 K.B. 743). It follows therefore that goods being put on rails would be deemed to be delivered to the buyer. If the objection is to be raised on the ground of weighment, it is to bedone before the goods are put on rail. In the present case the Hay Inspector accepted the despatch notes as correct without verifying the correctness of weight as stated therein. Consequently, he would be deemed to have agreed to the correctness thereof. The contractor cannot be held responsible for the shortage of hay at the receiving station. Under these circumstances the defence may be untenable. The fact that Civil Su plies Department have made similar reductions in other cases would not justify the making of a similar reduction in the present case. That defence will not be tenable in a Court of law. Civil Supplies Department may therefore consider whether the claim may not be compromised.

Id./.....

Additional Secretary to Government.

U.R. to C.S.D.,,No. G-250, dated the 25th June 1951.

SMR 25-7-56
4 Copies.

Office of the R.L.A.

The question for R.L.A.'s consideration is whether the word 'hay' includes dried rice straw used as cattle feed.

The word 'hay' is defined in the Oxford Dictionary as 'grass cut or mown and dried for use as fodder'. The word 'grass' is defined as herbage in general, the blades leaves and stalks of which are eaten by horses, cattle sheep etc; also in narrower sense, restricted to the smaller non-cereal Gramnex and plants resembling these in general. " 'Herbage' means 'herbs collectively; usually applied to grass and other low growing plants covering a large extent of ground especially used for pasture.' Food-crops would not strictly speaking come under 'herbs' and it follows therefore that paddy straw or rice straw would not be included in 'grass' or 'hay'. In the recent draft of the Bombay Hay Trade Licensing Order, 1951 which is to be issued by the Central Government an inclusive definition of hay(including dried rice straw used for fodder) is proposed by the Civil Supplies Department and in view of that there would now be no difficulty in regulating its price and distribution under the said Order.

Id./..... 18/7

Remembrancer of Legal Affairs.

U.R. to C.S.D.No. C-289, dated the 18th July 1951.

SMR 25-7-56
4 Copies.

The power to make orders under section 3 of the Essential Supplies(Temporary Powers)Act, 1946 in relation to production, supply and distribution of hay in the State of Bombay has been delegated by the Central Government to the Government of Bombay and in pursuance thereof the Revenue Department has issued the freezing order. This order expressed to be issued by order of the Governor of Bombay is signed by the Assistant Secretary, Revenue Department who is empowered to sign any order of the Government of Bombay by virtue of Rule 13 of the Rules of Business. This order can be modified by any order issued by the Government of Bombay and signed by any officer empowered to sign orders for Government. It is immaterial whether such officer is in Revenue Department or Civil Supplies Department. As the subject 'hay' is being dealt with in both the departments there is no objection to any officer in Civil Supplies Department , if he has been duly empowered to sign orders on behalf of Government, modifying an order issued in Revenue Department. This should, however, be done with the concurrence of Revenue Department for administrative reasons.

Id./..... 20/7

Remembrancer of Legal Affairs.

U.R. to C.S.D.No. G-297, dated the 21st July 1951.

SMR 25-7-56
4 Copies.

Legal Department.

It has been held by the A.L.A. under his No. G-331, dated the 1st August 1951 that the order made by the State Government in virtue of the delegation would continue to be in force even after the expiry of the period of delegation as the Act under which it is to be made continues to be in force. The only effect of the expiry of the delegation Notification would be that after that period the Government of Bombay will not be competent to amend the said Order or make any fresh order. The Government of Bombay would also not be in a position to cancel the said Order. Thus now, when the delegation Notification No. F.16-2/51-3P, dated the 27th April 1951 has expired, the Government of India is the only competent authority to cancel or modify the Revenue Department's Order No. 610-H/51, dated the 27th July 1951.

Id./.....

Additional Secretary to Government.

U.R. to R.D.,No. G-428, dated the 15th September '51.

SMR 25-7-56
4 Copies.

controlled rate of Rs. 45 per 2,000 lbs. The term 'cattle owners' indicates a class of person. As stated above, in the Order the persons to whom the stock could be required to be sold are required to be specified. Consequently, the Order dated 17th September 1951 should be cancelled and a fresh Order should be issued requiring Shri Laxman Tukaram Khandge to sell etc. to specified cattle owners. The manner of delivery as provided in clause 10(ii)of the Bombay Hay Control Order would include delivery by railway. The stock holder can, therefore, be directed to deliver a certain quantity or quantities of hay to specified cattle owner or owners in Bombay and to deliver the same by railway in Bombay to a specified comission agent or agents on his or their behalf. The Order should further specify that the controlled rate of Rs. 45 at which the stock holder will be required to sell would include the railway freight and other charges for delivery in Bombay.

The next question is what further action should be taken against Shri Khandge if he fails to comply with the order.

Sub-clause(iii)of clause 10 of the Bombay Hay (Control)Order, 1951 provides that if a person fails to comply with a notice issued under sub-clause(i) the Director of Civil Supplies or the District Magistrate or any officer authorised by him may enter upon the land or premises and take possession of the hay and deliver it to the person to whom it was required to be sold provided such person deposits the price of the stock with the officers named above. Civil Supplies Department can therefore take action under sub-clause(iii)of clause 10 in this case.

Shri Khandge can also be prosecuted for breach of sub-clause(i)of clause 10 of the Order.

Id./.....

Additional Secretary to Government.

U.R. to C.S.D.,No. G-521, dated the 24th October 1951.

Legal Department.

The question for consideration is whether permits for export of hay from Greater Bombay to any area outside the India Union are necessary under clause 3 of the Bombay Hay Control Order, 1951.

Clause 3 provides that- "Save as otherwise provided in this order, no person shall export or attempt to export or cause to be exported hay by road, rail, river, sea, or air from any place in any local area in which this clause has been brought into force to any place outside such local area except under and in accordance with the conditions of a permit issued in the Greater Bombay and the Scheduled villages and the Districts of Thana and Surat, by the Director of Civil Supplies, Bombay, and elsewhere by the District Magistrate concerned or by any officer authorised by him in this behalf." As the order has been issued under the Essential Supplies(Temporary Powers) Act, 1946, by this Government as the delegate of the Central Government. This case would be governed by R.L.A.'s opinion No. 4360 dated 5-5-48(copy attached)where a similar question regarding a permit under the C.T. Control of Movement Orderwas considered with reference to export to Pakistan.

It therefore seems necessary to obtain a permit even if hay is to be sent from Greater Bombay to a place outside the Indian Union.

Id./.....

Additional Secretary to Government

U.R. to C.S.D.No., G-589 dated 28th November 1951.

SMR 25-7-56, 4 Copies.